COVAD™

19 November 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: BellSouth Georgia/Louisiana, CC Docket No. 01-277

Dear Ms. Salas:

On November 13, 2001, BellSouth Corporation and its affiliates (BellSouth) submitted their reply comments in the above-referenced docket. In those comments, BellSouth attempted to address several issues raised by Covad Communications Company (Covad) in opposition to BellSouth's Georgia and Louisiana long distance applications. Rather than committing to fix a single one of the operational problems raised by Covad, BellSouth chose to obfuscate and misstate its way through numerous excuses for the poor state of its checklist compliance. By this *ex parte* letter, Covad sets the record straight.

BellSouth Claim: "83% of xDSL loops submitted from June through August region-wide could have been ordered electronically. That Covad has elected not to make use of BellSouth's electronic xDSL ordering capabilities does not mean that such capabilities do not exist." BellSouth Reply Brief at 19.

Covad Response: Rather than admitting its failure to implement mechanized ordering for the vast majority of loops capable of supporting DSL service, BellSouth uses semantics to obfuscate the state of its OSS. In the first instance, BellSouth's claim that 83% of xDSL loops submitted from June through August could have been ordered electronically is factually incorrect. In order to make this claim, BellSouth defines "xDSL loops" narrowly so as to include <u>only</u> stand alone ADSL, HDSL, and UCL loops. Thus, IDSL and linesharing, for example, are excluded from BellSouth's definition of "xDSL loops." It is difficult to understand how BellSouth could exclude IDSL loops – which are by BellSouth's own product definition used to provide DSL service – and linesharing – again by BellSouth's product definition, and by FCC rules, used to provide DSL services -- from its figures. BellSouth's game playing attempts to obscure its complete failure to provide electronic OSS for the majority (73% in Georgia in September 2001) of Covad's DSL order volume. Although BellSouth's ADSL, HDSL, and UCL loops can be ordered electronically, those loop products comprise only about 24% of Covad's loop orders in Georgia.   BellSouth is the recipient of all of Covad's loop

orders in Georgia and Louisiana, so BellSouth should know that simple fact. If BellSouth were to include IDSL and linesharing in its manual OSS count, as well as ADSL, HDSL, and UCL loops that required conditioning (presumably the 17% of DSL loops BellSouth is willing to admit cannot be ordered electronically), BellSouth numbers would match Covad's.

In addition to being factually inaccurate, BellSouth's claim is also conceptually nonsensical. The notion that Covad would voluntarily utilize a manual process, rather than an electronic capability, for ordering loops from BellSouth is ridiculous. As set out in detail in Covad's Comments, and in the Evaluation of the Department of Justice, manual UNE ordering processes impose huge costs on CLECs. A manual process is more expensive because BellSouth charges more. It is costlier to Covad because Covad must match BellSouth's manual processes with manual processes of its own, and thus must hire additional personnel to handle such processes. Manually processes also raise Covad's costs because an order submitted manually must be supplemented, disconnected, cancelled or otherwise changed manually. Thus, initial submission of a manual order merely begins the increased costs Covad suffers as a result manual ordering. Most importantly, Covad cannot compete effectively against BellSouth's retail DSL offerings, because BellSouth offers itself, and thus its retail customers, all the benefits of real-time order processing and order status updates. Prospective BellSouth customers thus enjoy much better customer service, and are more likely to order service from BellSouth than from Covad. BellSouth reaps the reward of its refusal to provide electronic OSS capabilities to Covad.

BellSouth has capitalized on its fully integrated electronic ordering to expand and dominate the market for DSL in its region. BellSouth's own press releases make this clear. At the close of 1999, BellSouth had some 57,000 DSL customers. That number grew to 215,000 by the end of 2000 and BellSouth set upon a course to drive DSL customer numbers to 600,000 by the end of 2001. BellSouth seems certain to meet even these ambitious targets. In the first quarter of 2001, BellSouth added 88,000 DSL customers to its count, a 40% increase over the previous quarter, and made $1 billion on data services. By the end of the third quarter of 2001, BellSouth DSL customers numbered 463,000.   As the DSL market grows, BellSouth's success demonstrates that fully integrated, mechanized systems enable BellSouth's retail arm to capture vast quantities of the DSL market. Sadly, competitors like Covad do not have similar capabilities in the BellSouth region.

BellSouth Claim: "Covad's complaint [about the lack of a DSL OSS testing environment] lacks merit because the original test environment as it currently exists provides CLECs with a full opportunity to test new maps of their interfaces, or to test the programming of their newly established EDI or TAG interfaces." BellSouth Reply Brief at 35-6. n. 31.

Covad Response: The Department of Justice addressed this specific issue in its Evaluation and rejected BellSouth's spin on the capabilities of its testing environment. Specifically, the Department of Justice echoed Covad's concerns about a lack of any test

environment within which Covad could have adequately tested with BellSouth before launching OSS capabilities. The Department concluded that "CLEC efforts to create robust electronic connections to BellSouth are hindered by an inadequate test environment and a process for implementing changes to BellSouth's OSS that appears overwhelmed by the demands placed on it."[1] Covad has been delayed in implementing EDI because of the lack of an adequate test environment. As the Department concluded, BellSouth's current testing environment "is not currently equipped to permit testing of DSL orders, which means that DSL providers cannot test upgrades to their systems."[2] The Department's evaluation of BellSouth's checklist compliance is statutorily due "substantial weight." BellSouth's evaluation of its own checklist compliance is not.

BellSouth Claim: "CLECs also have argued that BellSouth possesses "sole power" over changes to the change control process through an alleged "veto" power . . . . No such power exists." BellSouth Reply Brief at 39.

Covad Response: In a letter dated October 26, 2001, from BellSouth to Commissioner David Burgess of the Georgia Commission, BellSouth demonstrated unequivocally that it possessed veto power over matters submitted for change control.[3] Specifically, BellSouth attempted to respond to Covad's contention that it could not order conditioned loops electronically by noting that Sprint had submitted a change control for that functionality. The result of that change control request, according to BellSouth? "BellSouth subsequently rejected Sprint's change request on August 7, 2001," and then rejected it again on appeal. That's veto power.

BellSouth Claim: "Covad complains about the scope of KPMG's test in Georgia, specifically mentioning that KPMG did not test all aspects of BellSouth's xDSL OSS capabilities. Covad fails to mention, however, that KPMG did not test mechanzied ordering of xDSL capabilities because the mechanized ordering of xDSL capable loops was not yet available at the time the scope of the third-part test was finalized." BellSouth Reply Brief at 45.
    "The Georgia test, as conducted by KPMG, is the test approved by the Georgia Commission. I think even Covad would agree that it is impossible to electronically test products that were not electronically orderable at the time the scope of the Georgia test was being finalized." BellSouth Stacy Reply Aff. at para. 325.

Covad Response: BellSouth has the burden of proof in this adjudication. It can carry its burden as to OSS checklist compliance by adducing evidence of successful commercial usage, or it can introduce evidence of an independent third party test of its OSS

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[1] DOJ Evaluation at 13.

[2] DOJ Evaluation at 27. KPMG opened an exception in the Florida test stating that "BellSouth lacks an appropriate process, methodology, and robust test environment for the testing of the electronic data (EDI) interface." KPMG FL OSS Test, Amended Exception 6 at 1. In describing the impact of this deficiency, KPMG explains that deficiencies in environment make it difficult for CLECs to develop defect-free interfaces, and therefore affect their ability to deliver uninterrupted service to customers. *Id.* at 3.

[3] *See* Letter dated October 26, 2001, from Lynn Holmes, Vice President, Regulatory and External Affairs, BellSouth Corp., to David L. Burgess, Commissioner, Georgia Public Service Commission, at 9. BellSouth has already submitted this letter in this docket.

capabilities. By admitting that the Georgia test did not test electronic ordering of xDSL loops, BellSouth itself makes discussion of the Georgia test with respect to OSS for DSL totally irrelevant. Thus, BellSouth must rely on commercial usage of its xDSL OSS to satisfy its checklist burden of proof. Covad has presented substantial evidence in this proceeding that BellSouth's OSS for xDSL loops and line sharing fail to comply with section 271. In the face of that evidence, BellSouth inexplicably turns again to the Georgia third party test.

BellSouth correctly states that it had not yet made mechanized ordering capability available for any of its DSL loop products at the time the KPMG supplemental test scope was finalized by BellSouth. KPMG likewise did not test line sharing, nor any of the processes and procedures developed for line sharing which BellSouth claims were available at the time of this Commission's deadline, June 6, 2000. That deadline predates the conclusion of the KPMG test by some 9 months. Nonetheless, BellSouth did not wish to test those processes, so they were simply excluded from the third party test in Georgia. BellSouth and Covad thus agree that KPMG did not test *any* of BellSouth's electronic DSL OSS capabilities. Whether or not any such capabilities existed when BellSouth designed its own OSS test is not relevant to the question of whether the KPMG test proves BellSouth's OSS checklist compliance. The operative question is not what BellSouth did or did not provide when the KPMG test plan was formulated. It is clear that the KPMG test did not examine electronic xDSL OSS capabilities, and thus the KPMG test does nothing to support BellSouth's claims of checklist compliance.

The question before this Commission remains a simple one: In September 2001, when BellSouth filed the instant applications, was BellSouth in compliance with the OSS requirements of section 271? Covad's evidence proves that the vast majority of xDSL capable loops cannot be ordered electronically. Moreoever, Covad has shown that the systems that do exist for ordering a small number of DSL loops do not support actual commercial usage. Rather than attempting to rebut that evidence, BellSouth turns to the Georgia third party test. The only conclusion that can be reached is that the evidence fails to support true commercial usage of the OSS for xDSL and the third party test offers no evidence whatsoever of checklist compliance.

While failing to test any electronic OSS for xDSL loops or line sharing, KPMG did reach several conclusions about the importance of electronic ordering capabilities in Georgia. In fact, KPMG in Georgia found discriminatory BellSouth's refusal to provide electronic DSL ordering capability to competitors while providing such capability to its own retail arm. In its OSS report, KPMG concluded that the absence of electronic ordering capabilities for CLEC xDSL providers was "discriminatory."[4] KPMG even opened an exception on that basis.[5] Thus, KPMG's report supports Covad's own statements regarding this application. When Covad is forced to submit 73% of its orders manually, while BellSouth's retail groups have full electronic ordering, Covad is denied a meaningful opportunity to compete.

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[4] *See* KPMG Supp. Test Report IV F-17.
[5] KPMG Exception 108.

Despite KPMG's acknowledgement of this discriminatory treatment, BellSouth simply submitted documentation that purported to demonstrate BellSouth's intention to deploy limited electronic ordering for some xDSL loops. On the basis of the existence of that documentation alone, KPMG closed the exception. KPMG performed no tests of the electronic system. When it closed this exception, KPMG did not even know if a single CLEC had been able to successfully submit an order through these new electronic interfaces. In fact, in the recent North Carolina Commission hearings on BellSouth's pending section 271 application, KPMG's witness admitted that the KPMG parity evaluation of DSL did nothing but compare *documented* processes – not the actual functionality, or lack thereof, of BellSouth's OSS.[6] The testimony of KPMG witness Weeks in response to questioning by Cathy Boone of Covad was as follows:

Q. Okay. So when we talk about a parity evaluation of DSL between retail and wholesale, what we're really talking about is the documented processes for both of those are--appear to be in parity?
A. That's the objective of this test, that is, to examine the process, yes.
Q. And you're making no representation whether the functionality of these processes is, in fact, in parity?
A. As it operates every day, no.[7]

BellSouth Claim: "Covad conveniently ignores that WorldCom submitted a change request to the CCP, requesting pre-ordering functionality for EDI. Because CCP participants have prioritized this change request 21st out of 36 pre-ordering and ordering changes requests, further development is currently on hold." BellSouth Reply Brief at 46, n. 42.

Covad Response: EDI is the industry standard OSS interface. BellSouth should have developed this interface for pre-ordering at the same time that it developed the other TAG and LENS interfaces, rather than requiring that such a change be submitted through the quagmire of the change control process . Because BellSouth refused to deploy EDI pre-ordering, Covad must compete with WorldCom and all other CLEC requests to get the system changes it needs. The real evaluation should be how much time, money and resources BellSouth devotes to CLEC change control issues as opposed to how much time, money and resources BellSouth devotes to requests made by its retail unit for system development and improvements.

BellSouth Claim: "Covad's discussion of the additional costs purportedly associated with acquiring loop makeup information in BellSouth's region is both incoherent and internally inconsistent." BellSouth Reply Brief at 75, n.57.

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[6] *See* KPMG Final Test Report, March 20, 2001, at IV-F-17. ("Based on a review of the documentation, the newly available electronic ordering functionality is adequate to support CLEC order submission requirements and is non-discriminatory to retail.").
[7] *See* In The Matter Of Application of BellSouth Telecommunications Inc. to Provide in-Region InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996, Transcript, Docket No. P-55, sub. 1022, vol. 6, November 1, 2001, p. 91.

Covad Response: How could BellSouth discern internal inconsistency from a passage in Covad's comments that was incoherent? Had BellSouth actually read Covad's comments, it would have learned that the study did not address costs "purportedly associated with acquiring loop makeup information in BellSouth's region," but rather the cost of submitting a UNE loop order. The cost of submitting a loop order in California via EDI pre-order and order OSS interfaces is $0.00. The cost of submitting a loop order using manual OSS processes in BellSouth's region is significantly more, as set out in Covad's initial comments. BellSouth attempts to obfuscate the issue by claiming that it has electronic pre-order capabilities available, which is true in some circumstances, but that was not the point Covad's comments sought to make.

BellSouth Claim: "At the conclusion of the beta test, Ms. Collette Davis of Covad provided a "report card" wherein she said, "I find that your responsiveness to questions and issues presented by me to you regarding EDI or other system questions has been superb." (Reply Exhibit OSS-22; as part of this exhibit, BellSouth is also providing the "report cards" of the other CLECs and vendors that chose to complete them.) Ms. Davis' ratings for every category, including offering solutions, addressing needs, responding to changing circumstances, and looking for ways around roadblocks were all #1 - Excellent. Covad's comments to this Commission cannot be reconciled with its contemporaneous comments made outside of the regulatory arena. Until the recent 271 proceedings in North Carolina, BellSouth had not been made aware that Covad did not find the beta test period useful, or that it was less than fully satisfied with the results." BellSouth Stacy Reply Aff. at para. 208.

Covad Response: This "report card" is probably the most blatant misrepresentation by BellSouth in these pleadings. BellSouth would have the Commission believe that Covad's criticism of BellSouth's OSS is a fiction, created for regulatory consumption, and contrary to off-line positive statements about BellSouth's OSS. As evidence of this alleged duplicity, BellSouth trumpets a report card, submitted by Collette Davis of Covad, purportedly rating BellSouth's OSS as "excellent."

The report card is attached to this *ex parte* letter. This was not, as BellSouth alleges, an evaluation of BellSouth's OSS. This was a personal report on one individual's performance. Covad's Davis made clear that her evaluation was of one person, that she did not feel other BellSouth employees performed as well, and she specifically declined to make any comments on BellSouth's supervisory personnel on the OSS test.   Most importantly, the "report card" makes clear on its face that it is in no way an evaluation of BellSouth's OSS. [8] Ms. Davis' comments on the "report card" make it clear that when praise for an individual's performance is due, Ms. Davis will offer that praise. Likewise, Ms. Davis' affidavit accompanied Covad's comments filed in Georgia on BellSouth's 271 application. With that same level of candor, Ms. Davis explained in detail the deficiencies of BellSouth's OSS system for DSL loops and line sharing. Covad suffers real, competitive harm as a result of BellSouth's failure to provide functional electronic OSS capabilities. Unlike BellSouth, Covad does not view the regulatory process as a game. BellSouth's future is not a stake.

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[8] The actual report card is attached, with the name of the BellSouth employee blocked out.

Second, BellSouth's claims regarding its OSS ignore the evidence submitted by Covad about the nonfunctional nature of BellSouth's LENS OSS. Covad participated in the EDI beta test. There was no available beta test for LENS.

BellSouth Claim: "On page 24 of its Comments, Covad greatly exaggerates the impact of the problem associated with CLECs' ability to supplement xDSL orders that have been placed in MA status. BellSouth reviewed the xDSL orders submitted by Covad (as identified in its Confidential Exhibit D) and discovered that only 0.4% of the total xDSL orders that it submitted electronically from June through August 2001 were ever actually in MA status. That means this issue did not affect 99.6% of Covad's orders." BellSouth Stacy Reply Aff. at para. 214."

Covad Response: Continuing a pattern of denial of problems with its OSS systems, BellSouth attempts to minimize the legitimate problems identified by Covad. BellSouth's systems prevented Covad from supplementing *any* orders – not just orders in missed appointment status. Although BellSouth does not want to admit this serious flaw existed until August 17, 2001, Covad attaches a September 27, 2001 email from BellSouth change control group that clearly supports the existence of the flaw. It states with regard to xDSL orders through LENS, "[p]roblems with ability to sup or cancel corrected, with the exception of sups on orders in the MA status." If, as BellSouth contends, there never was a problem with supplementing or canceling all xDSL orders in LENS, why does BellSouth's change control group acknowledge the existence and purported remedy of such a problem? Ultimately, until BellSouth admits the problem exists, Covad holds no hope of getting it fixed.

Furthermore, although BellSouth put a fix in place on August 17, 2001, that fix has not been tested or evaluated by anyone other than BellSouth. And the fix is incomplete -- orders in missed appointment status, as BellSouth acknowledges, still cannot be supped through BellSouth's electronic OSS. BellSouth attempts to minimize the significance of this problem by contending that it placed only a small percentage of Covad's order in missed appointment status. Because BellSouth conducted this "study" of Covad's orders on its own long after submitting its application, it effectively denied Covad a fair opportunity to challenge BellSouth's questionable figures. BellSouth's failure to fix the underlying problem with its OSS, however, is undisputed.

BellSouth Claim: "Covad claims, on page 22 of its Comments, that it could not submit loop disconnect orders through LENS. This claim, however, is completely unfounded, because CLECs have always had the ability to issue a disconnect order for both xDSL and Line Sharing lines via LENS." BellSouth Stacy Reply Aff. at para. 217.

Covad Response: This loop disconnect problem highlighted by Covad in its comments is related to the same system flaw that prevented Covad from supping orders through LENS. Specifically, the flaw in BellSouth's OSS prevented Covad from supplementing any orders electronically. Thus, if Covad submitted an order electronically, and Covad's customer subsequently decided to terminate its order, Covad could not supplement its

order with a loop cancellation request. Although as BellSouth notes CLECs can submit disconnect orders electronically, CLECs could not supplement an order with a disconnect request. This was the system flaw to which Covad referred in its initial comments.

BellSouth Claim: "In the case of CO-based Line Sharing, Covad refuses to use the mechanized process that is available, instead opting to submit its orders manually." BellSouth Stacy Reply Aff. at para. 227.

Covad Response: As the LENS chart attached to Covad's initial comments demonstrates, Covad began ordering Line Sharing through LENS on June 4, 2001. Shortly thereafter, Covad diagnosed serious ordering problems with xDSL loops and line sharing, as well as formatting and documentation problems. As set out in detail in Covad's initial comments, Covad was forced to stop using BellSouth's mechanized OSS, because it was wreaking havoc with Covad's orders. Covad's refusal to use BellSouth's electronic ordering capability through LENS is the result of one simple fact that BellSouth fails to mention – it doesn't work. At this time, Covad is once again attempting to place line shared orders electronically, but a large number of system flaws remain as substantial barriers to effective electronic ordering.

Please do not hesitate to contact me with any questions.

Respectfully submitted,

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